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CLEARINGHOUSE RULE 96-129

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. In the introductory clause preceding the plain language analysis, the word “chapter” should be inserted after “create” and a comma should be inserted after “ERB 6.”

b. The treatment clause of SECTION 1 should read: “SECTION 1. Chapter ERB 6 is created to read:”.

Also, immediately following the treatment clause, the chapter number and chapter title should appear in solid capital letters with no underscores. [See s. 1.05, Manual.]

c. Throughout the draft, rule section numbers and titles should be rewritten in solid capital letters and underscored. [See s. 1.05 (2) (b), Manual.]

d. In s. ERB 6.02 (1) and (2), substitute “means” for “is.” [See s. 1.01 (7) (c), Manual.]

Also, in sub. (2), substitute “county” for “county(s).” [See s. 1.01 (6), Manual.]

e. In s. ERB 6.02 (4), the phrase “teams have” should be replaced by the phrase “team has.”

f. In s. ERB 6.02 (5), the correct citation is “49 USC 5102 (2).”

g. In s. ERB 6.02 (6), why is the definition of the term “hazardous substance” derived from s. 144.01 (4m), Stats., rather than s. 166.20 (1) (g), Stats.?

h. Section ERB 6.02 (7) lists eight possible definitions for the term “insolvent.” This subsection should be rewritten to contain only one definition. In this instance, the most complete definition of the term appears to be either s. 128.04 or 401.201 (23), Stats. The definition that appears to best suit the purpose of the rule should be chosen. Finally, if the list of cross-references is retained, the correct reference for the federal provision is 11 USC 101 (32).

i. In s. ERB 6.02 (10), (11), (12) and (15), except for the first letter of the defined terms, the definitions should be shown in lowercase. [See s. 1.01 (4), Manual, and other sections of the rule in which these terms may be capitalized.] Also, in sub. (11), the phrase “shall include” should be replaced by the word “includes” and the phrase “analysis on the insolvency” should be replaced by the phrase “analysis of the insolvency.”

j. In ss. ERB 6.02 (11) and 6.03 (2) and (3) and other sections of the draft, substitute “board” for “Board.” [See s. 1.01 (4), Manual.]

k. In s. ERB 6.02 (13), the word “or” should be replaced by the word “and.”

l. In s. ERB 6.03 (1), (3) and (4), substitute “shall” for “must” and “will.” [See s. 1.01 (1) and (2), Manual.] Also, similar changes should be made in other sections throughout the proposed rules.

m. In s. ERB 6.04, delete “(1)” in the introductory material and substitute “(1)” for “(a),” “(2)” for “(b)” and “(3)” for “(c).” Also, in s. ERB 6.05 (1), pars. (a) and (b) should be renumbered as subs. (2) and (3); subs. (2) and (3) then should be renumbered as subs. (4) and (5). Finally, in s. ERB 6.04 (1) (a), the phrase “contracts for regional hazardous materials response team services” should be shown in lowercase; and the phrase “Level B Teams” should be replaced by the defined term, “authorized level B response team.” [The entire rule should be reviewed for the correct use of the defined term.]

n. In ss. ERB 6.07 and 6.08, substitute “board chair” for “Board Chair” and “his or her” for “his/her.” [See s. 1.01 (4) and (9), Manual.]

o. In ss. ERB 6.09 to 6.12, delete “(1).” A subsection designation is unnecessary when there are less than two subsections in a rule section.

p. In the first sentence of s. ERB 6.10, substitute “may” for “can.”

q. In s. ERB 6.13 (5), substitute “circuit court” for “Wisconsin Circuit Court.”

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. ERB 6.02 (4), delete “established in ERB 6” and substitute “of this chapter.” [See s. 1.07 (2), Manual.]

b. In s. ERB 6.02 (9), substitute “s. 166.20 (1) (gi), Stats.” for “s. 166.20 (gi), Stats.” Also, if the form referred to in this provision, and in s. ERB 6.08, is a new or revised form, then the requirements of s. 227.14 (3), Stats., should be met.

c. In s. ERB 6.03 (2), delete “Item 6.05 herein” and substitute “s. ERB 6.05.” [See s. 1.07 (2), Manual.]

d. In s. ERB 6.05 (3) (f), delete “Wisconsin Administrative Code Chapter ILHR 30” and substitute “ch. ILHR 30.” [See s. 1.07 (2), Manual.]

e. In s. ERB 6.06 (3), substitute “section” for “part.”

f. In s. ERB 6.11, substitute “this chapter” for “ERB 6.”

g. In s. ERB 6.13 (4), substitute “ch. 227, Stats.” for “chapter 227 of the Wisconsin Statutes.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. ERB 6.02 (1), the comma following the word “agency” should be deleted.

b. In s. ERB 6.02 (12), insert a comma after the first “person,” and insert “hazardous” before the first “substance.” Also, substitute “containers, as defined” for “containers defined” and insert a comma after the second “Stats.”

c. In s. ERB 6.03 (3), a reference is made to a two-year deadline. However, the Note refers to a one-year deadline. This should be clarified.

d. In s. ERB 6.04 (1), the second sentence is unclear. Perhaps it should be rewritten to read: “Temporary emergency measures include . . . security and emergency evacuation; source, control, release containment, neutralization or other treatment methods; contaminated runoff control and similar activities”

e. In s. ERB 6.05 (1) (a) and (b) and (3) (f), insert a comma after “include” and after the first “to.” Also, in sub. (2), pars. (a), (b) and (c), a comma should be inserted following the words “identified,” “pay” and “pay,” respectively. Finally, in sub. (2) (c), to what does the phrase “proof of service” refer?

f. In s. ERB 6.05 (3) (b), a cross-reference to the statutory or Administrative Code provision requiring notice to the board should be included.

g. In s. ERB 6.06 (1), substitute “provide” for “copy.”

h. In s. ERB 6.09, in the second sentence, delete “need retain the records no longer” and substitute “may destroy or otherwise dispose of the records.” Also, delete the third and fourth sentences and substitute: “To give the board an opportunity to take possession of the records, the response team shall give the board 60 days written notice before any such record may be destroyed.”

i. In s. ERB 6.10, what is the meaning of the phrase “according to relative financial burden?”

j. Section ERB 6.11 refers to guidelines and procedures provided by the board. If these guidelines and procedures meet the definition of the term “rule,” as defined in s. 227.01 (13), Stats., then they should be promulgated as administrative rules.

k. In s. ERB 6.12, a comma should be inserted after the first occurrence of the word “board.” Also, it appears that the phrase “reimbursement moneys for which costs have been recovered” should be replaced by the phrase “recovered costs.”

l. In s. ERB 6.13 (3), the phrase “If the situation is still not resolved” should be replaced by language indicating that a response team, following an appeal to the board, may request a problem resolution process. Also, as in other areas of the rule, unnecessary capitalization occurs in this subsection. [See s. 1.01 (4), Manual.] Finally, sub. (6) appears to be unnecessary and should be deleted. The requirements for an appeal of an agency decision to the circuit court is regulated by provisions in ch. 227, Stats.